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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2009 OCT 20 PM 3: 56

JEANNE HICKS, CLERK

B. Hamilton

BY: _____

16 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

17 IN AND FOR THE COUNTY OF YAVAPAI

18 STATE OF ARIZONA

19 Plaintiff,

20 vs.

21 STEVEN CARROLL DEMOCKER,

22 Defendant.

) No. P1300CR20081339

) Division 6

) **REPLY IN SUPPORT OF**
) **MOTION TO STRIKE DEATH**
) **NOTICE BASED ON VIOLATION**
) **OF ARIZONA RULE OF**
) **CRIMINAL PROCEDURE 15.1**

23 Defendant Steven DeMocker requests that this Court strike the State's Notice of
24 Intent to Seek Death ("Notice") because the State violated Arizona Rule of Criminal
25 Procedure 15.1 by failing to timely file the Notice.

26 The State admits that it failed to either timely file or request an extension to file
27 its Notice of Intent to Seek Death pursuant to Arizona Rule of Criminal Procedure 15.1.
28 There is also no dispute that the State filed its Notice with respect to (f) (2)(5)(13) and
(12), thirty-one days after expiration of the time permitted under Rule 15.1(i), and for

1 (f)(6), seventy-seven days past the time permitted under the Rule. The State also
2 acknowledges that the Rule is mandatory and does not provide any reason for its delay
3 and failure to even request an extension of time to file.

4 However, the State goes on to craft its own rule for timely filing a Notice under
5 Rule 15.1 based on its assertion that the timing was “reasonable considering the overall
6 evolution of the case.” The State cites no authority for this rule – because there is
7 none.¹ The State’s Response would have the Arizona Rules of Criminal Procedure be
8 simply advisory if convenient to the prosecution. This interpretation of the Rules is a
9 violation of the separation of powers – the Supreme Court has sole authority to create
10 rules of procedure. See Ariz. Const. art. VI, § 5 (“The Supreme Court shall have: ...
11 Power to make rules relative to all procedural matters in any court.”) The rulemaking
12 power is exclusive. See *State ex rel. Collins v. Seidel*, 142 Ariz. 587, 691 P.2d 678
13 (1984).

14 Mr. DeMocker need not show prejudice. Rule 15.7 permits the Court to impose
15 any sanction it finds appropriate where a party violates the disclosure required under
16 Rule 15. See Ariz. R. Crim. P. 15.7(a). A trial court has broad discretion. A court need
17 not find that other less stringent sanctions are not applicable to effect the ends of justice
18 “where the only potential ‘loss’ to the criminal proceeding is a sentencing option.”
19 *Barrs v. Wilkinson*, 186 Ariz. 514, 924 P.2d 1033 (1996).

20 The State’s failure to follow the Rules is also a violation of Mr. DeMocker’s
21 rights under the Sixth, Eighth and Fourteenth Amendments and due process. In a death
22 penalty case, a defendant is entitled to an elevated level of due process. *Beck v.*
23

24 ¹ If an exception for delay in filing a notice does exist, the State’s citation to *State v. Cropper*, 205 Ariz.
25 181, 184, 68 P.3d 407, 410 (2003) is instructive for its limitation. In that case, a late notice was filed because the
26 offense warranting the aggravator had not been committed until after the initial notice was filed. Therefore, it was
27 impossible for the state to comply with the Rule. Here the State alleges no new acts and no impossibility for its
28 compliance.

1 *Alabama*, 447 U.S. 625, 638 (1980). Although there is still time to prepare before trial,
2 the State has acknowledged that it does not have evidence to support probable cause
3 with respect to each of the aggravators it has alleged – asking the Court for more time
4 and advising that it is awaiting results.² Specifically with respect to the last disclosed
5 (f)(6) aggravator, on October 5, 2009 the State disclosed a summary of a conversation
6 with the medical examiner, Dr. Keen, that contains information inconsistent with the
7 information in the autopsy report.³ The disclosure is still not complete as there is no
8 explanation of the basis for the conclusions and no report from Keen himself. Thus, Mr.
9 DeMocker is still not able to properly prepare to respond to this alleged aggravator.

10 Compliance with Rule 15.1 is not optional for the State and dismissal of the
11 Notice of Intent to Seek Death is the appropriate remedy in this case.

12 DATED this 20th day of October, 2009.

13
14
15 By: 

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20 Larry A. Hammond
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24 Attorneys for Defendant

25 **ORIGINAL** of the foregoing filed
26 this 20th day of October, 2009, with:

27 Jeanne Hicks
28 Clerk of the Court

² This is true even though a prosecutor has an ethical obligation to have probable cause at the time he or she alleges a specific aggravator. See *Chronis v. Steinle*, 220 Ariz. 559, 562, 208 P.3d 210 (2009).

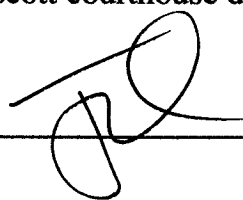
³ This one page summary was also produced on September 29, 2009 on a page that did not identify who or what agency prepared the report. No audio of this conversation was provided and it is allegedly incomplete based on a technical failure.

1 Yavapai County Superior Court
120 S. Cortez
2 Prescott, AZ 86303

3 **COPIES** of the foregoing delivered
this 20th day of October, 2009, to:

4 The Hon. Thomas B. Lindberg
5 Judge of the Superior Court
Division Six
6 120 S. Cortez
Prescott, AZ 86303

7 Joseph Butner, Esq.
8 Office of the Yavapai County Attorney
Prescott courthouse drawer

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